



### *Factual Background*

As a result of an alleged confrontation with a Boston Police Officer on June 26, 2006, the Appellant was charged with several violations of the Department's Rules and Regulations. The appellant appeared before a State Police Trial Board to contest the charges on October 11 & 15, 2007. After hearing, the Trial Board sent a recommendation, dated October 15, 2007, to State Police Colonel/Superintendent Mark F. Delaney (hereafter "Col. Delaney"), that the Appellant be suspended without pay for a period of six (6) months.

On October 17, 2007, the Appellant's counsel was notified of the Trial Board's recommendation by Lieutenant Colonel Marian McGovern (hereafter "Lt. Col. McGovern"). Counsel requested Lt. Col. McGovern to postpone having the recommendation approved by the Appointing Authority, Col. Delaney, in order to give the Appellant an opportunity to retire, as he had accrued the requisite time to do so. The Appellant had never been disciplined in his over twenty-five (25) year career and wished to avoid the potential embarrassment of the issuance of a disciplinary suspension being placed on his personnel record. Later in the day on October 17, 2007, the Appellant's counsel informed Lt. Col. McGovern that the Appellant chose to retire rather than have the Trial Board's finding approved by Col. Delaney and disseminated in personnel orders. The Appellant believed, upon representation of Lt. Col. McGovern, that this arrangement was acceptable and made his decision to retire in reliance upon this agreement.

On October 18, 2007, the Appellant met with the State Police retirement coordinator and processed the paperwork required for retirement. His retirement was scheduled to be effective on Saturday, October 20, 2007, though the election was revocable until the effective date. On October 19, 2007, the Appellant turned in all of his work related equipment to the State Police Supply Section.

After the close of business hours on Friday, October 19 at approximately 5:15 p.m., Lt. Col. McGovern informed the Appellant's counsel that, after consulting with the State Police Legal Section, the Lt. Col. was informed that the suspension had to be executed and disseminated. Because this occurred after business hours on a Friday, the Appellant could not withdraw his retirement application. The Appellant's retirement became effective on Saturday, October 20, 2007.

On Tuesday, October 23, 2007, the State Police disseminated a Personnel Order issuing the six (6) month suspension to the Appellant. At a March 21, 2008 Motion Hearing held at the Civil Service Commission (hereafter "Commission") on this matter, the parties stipulated that the October 23, 2007 Personnel Order regarding the Appellant's suspension was issued immediately prior to the October 23, 2007 Personnel Order acknowledging the Appellant's retirement. Therefore, the suspension was issued on paper only and was never actually served. Thereafter, the Appellant timely filed this appeal on October 30, 2007 seeking to overturn the suspension and, thus, clear his name and record of the discipline.

*Respondent's Grounds for Dismissal*

The Department asserts that the Appellant's appeal was filed with the Commission on October 30, 2007 which was ten (10) calendar days after his voluntary retirement and Honorable Discharge from the State Police in accordance with G.L. c. 32, § 28A. The Department argues that, since the Appellant voluntarily retired from the State Police prior to the issued recommendation of the Trial Board and prior to the filing of this appeal, the Appellant knowingly waived all of the rights and benefits associated with his employment with the State Police, including any appeal rights under G.L. c. 22C, § 13 and/or c. 31, §§ 41 – 45. Essentially, the Department maintains that the appeal has been rendered moot by the Appellant's retirement.

### *Conclusion*

G.L. c. 31, § 41 provides that a tenured civil service employee, "Except for just cause . . . shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent . . . lowered in rank or compensation without his written consent, nor his position be abolished." The Commission, pursuant to § 43, has jurisdiction to hear and decide appeals of any person aggrieved by a decision of an Appointing Authority made pursuant to § 41.

The threshold decision to be made in order for the Commission to have jurisdiction to hear this appeal is to determine whether the Appellant is a "person aggrieved", pursuant to § 41. We find that the Appellant's retirement made any discipline issued by the Department a nullity. The Appellant was never "suspended for a period of more than five days". For Civil Service purposes, the discipline is moot as the Appellant has already

retired, or at the very least, retired simultaneous to the issuance of the suspension. Therefore, the Appellant could not have been aggrieved by an action of the Appointing Authority.

The Commission finds that, since the Appellant is not an “aggrieved party” in accordance with G.L. c. 31, § 41, the Commission lacks jurisdiction over this appeal. Therefore, for all of the reasons stated herein, the Respondent’s Motion for Summary Decision is allowed and the appeal on Docket No. D-07-368 is hereby *dismissed*.

Civil Service Commission

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John J. Guerin, Jr.  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Taylor, Henderson, Marquis and Guerin, Commissioners) on March 27, 2008.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the

motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Scott W. Dunlap, Esq.

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